

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**SIXTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LEOBARDO BLANCARTE et al.,

Defendants and Appellants.

H026676

(Santa Clara County  
Super. Ct. No. 210706)

**ORDER MODIFYING OPINION AND  
DENYING REHEARING**

**NO CHANGE IN JUDGMENT**

THE COURT:

It is ordered that the opinion filed on August 1, 2006, be modified as follows:

1. On page 6, the last sentence of the first full paragraph is modified to read as follows:

Nevertheless, he continued kicking him out of anger and then stopped.

2. On page 7, the first sentence of the second full paragraph is modified and a second sentence is added after the first sentence so they read as follows:

Landin testified that moments after he yelled out about a gun, Blancarte arrived and started kicking Jose. Landin joined Blancarte in kicking him.

3. At the end of the second full paragraph, after the sentence ending “avert the present danger” add as footnote 6 the following footnote, which will require renumbering of all subsequent footnotes:

<sup>6</sup> We also reject the Attorney General's claim that the court did not err in refusing to instruct on imperfect defense of another because the California Supreme Court had not yet recognized the partial defense.

4. On page 20, line 5, the words "was a rival Sureno" are deleted so that the sentence reads:

A jury could also find that upon arriving, a reasonable person would further believe that Jose, who, having been assaulted, was now struggling to retrieve a gun and angrily bent on retaliation.

There is no change in the judgment.

Respondent's petition for rehearing is denied. (Mihara, J., would grant rehearing.)

Dated:

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RUSHING, P.J.

I CONCUR:

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McADAMS, J.